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6 **UNITED STATES DISTRICT COURT**

7 **DISTRICT OF NEVADA**

8 ROBERT VEGA, SR. et al.,)

9 Plaintiffs,)

10 vs.)

11 CTX MORTGAGE CO., LLC et al.,)

12 Defendants.)

3:10-cv-00405-RCJ-VPC

13 **ORDER**

14 This is a standard foreclosure case involving one property. The case is not part of MDL
15 Case No. 2119. The Complaint is a class action complaint, but no motion to certify a class has
16 been filed. In a published order, the Court granted two motions to dismiss in part, dismissing all
17 claims except that for statutorily defective foreclosure, and requiring mediation and interim
18 payments. *See Vega v. CTX Mortg. Co., LLC*, 761 F. Supp. 2d 1095 (D. Nev. 2011). Although
19 the Court found the affirmative claims to be without merit, the Court temporarily enjoined
20 foreclosure because it was not clear MERS' assignment of the deed of trust was effective to
21 transfer the beneficial interest in the underlying debt from lender/assignor CTX Mortgage Co.,
22 LLC ("CTX") to assignee Chase Home Finance ("Chase") or that MERS had the ability to
23 transfer the underlying debt directly. The Court noted, as it has noted in other cases, that "Chase
24 could cure this defect via an affidavit from CTX indicating that CTX specifically commanded
25 MERS to transfer CTX's interest in the note to Chase, or that MERS' agency for CTX extended

1 this far as a general matter under the [first deed of trust].” *Id.* at 1096 n.1.

2 Bartosh, Matthews, and CTX have now adduced such an affidavit and have moved to
3 dismiss and for relief from the mediation requirement. Michael K. Sullivan attests that he is the
4 Senior Vice President and General Counsel of CTX and that he has personal knowledge of the
5 subject mortgage based upon an internal review of CTX’s files. (*See* Sullivan Aff. ¶ 1, Apr. 1,
6 2011, ECF No. 41-1). He attests that CTX’s internal files indicate that “CTX transferred the
7 Note and Deed of Trust on the first lien to [Chase] on September 26, 2005, and transferred the
8 Note and Deed of Trust on the second lien to Residential Funding Company, LLC on August 12,
9 2005.” (*Id.* ¶ 3). This is not enough, however, and it is confusing, as well. First, the attestation
10 does not answer the questions the Court asked: whether CTX commanded MERS’ 2009
11 assignment of the mortgage from CTX to Chase, (*see* Assignment, Dec. 24, 2009, ECF No.
12 22–5, at 2), or whether MERS’ agency under the first deed of trust extended this far as a general
13 matter so as not to require a specific command. Second, the deeds of trust are dated July 15,
14 2005 and October 14, 2005, respectively, but Sullivan attests that CTX transferred them to third
15 parties on September 26, 2005 and August 12, 2005, respectively. CTX cannot have transferred
16 the second deed of trust two months before it came into existence. Not only has Sullivan failed
17 to attach the records his affidavit relies on, this discrepancy indicates that the records are
18 themselves unreliable, that he has looked at the wrong records, or some other error or
19 misstatement.

20 Of course, it is the current alleged beneficiary and trustee, Chase and Cal-Western
21 Reconveyance Corp. (“Cal-Western”), respectively, not the moving Defendants, who need
22 produce such evidence to be entitled to dismissal or summary judgment. The moving
23 Defendants did not foreclose, and in fact they disclaim any interest in the Property. (*See id.* ¶ 4).
24 Likewise, Matthews and Bartosh were only the original trustees, and it is Cal-Western, the
25 trustee substituted in by Chase, who is alleged to have filed the defective notice of default. It is

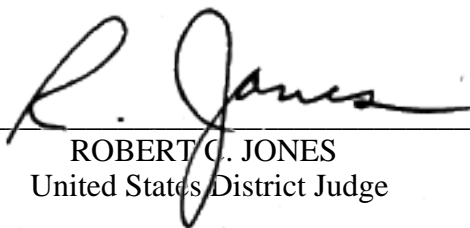
1 these facts that entitle the moving Defendants to dismissal and relief from the mediation
2 requirement. Chase and Cal-Western have not joined the present motions and are not relieved
3 from the order.

4 **CONCLUSION**

5 IT IS HEREBY ORDERED that the Motion to Dismiss (ECF No. 41) and Motion for
6 Relief from Order (ECF No. 42) are GRANTED.

7 IT IS SO ORDERED.

8 Dated this 24th day of August, 2011.

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12 ROBERT C. JONES
13 United States District Judge
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